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Official Records

101st Meeting
Thursday, 28 July 1994, 10 a.m.
New York

President: Mr. Insanally ..... (Guyana)

The meeting was called to order at 10.25 a.m.

Agenda item 36 *(continued)*

Law of the Sea

(a) Report of the Secretary-General (A/48/950)

(b) Draft resolution (A/48/L.60)

(c) Report of the Fifth Committee (A/48/964)

Mr. Thanarajasingam (Malaysia): I am delighted, Mr. President, that you are here today to chair this historic meeting.

Almost three decades have passed since we first embarked on the quest for a new regime of the law of the sea. This initiative, which began in 1967, crystallized into the Third United Nations Conference on the Law of the Sea in late 1973 and culminated, after nine years of arduous negotiations, in the adoption of the Convention on the Law of the Sea on 10 December 1982.

Malaysia has been involved in the process of negotiating the Convention from its inception. We are proud to have been one of the 119 countries that signed the Convention on the day it was adopted.

The fact that 150 countries representing all regions and all legal and political systems of the world responded to the need to elaborate a new and comprehensive regime of the law of the sea was a significant development in international relations. The ideal behind the elaboration of the Convention, namely to establish true universality in the efforts to achieve a just and equitable international economic order governing ocean space, was shared by the international community. The incorporation into the Convention of the concept of the common heritage of mankind in relation to the seabed and ocean floor was indeed a milestone in the history of international treaties.

Notwithstanding the adoption of the Convention on the Law of the Sea in 1982, its progress was stymied. It was not until 16 November last year - almost 11 years after the Convention was adopted - that the sixtieth instrument of ratification was deposited, fulfilling the requirement of Article 308 of the Convention. Accordingly, the Convention will enter into force on 16 November this year.

Even so, a total of 60 or so States Parties to the Convention, nearly all of whom represent the developing world, does not symbolize universal acceptance of the Convention. The reason behind the lack of universal acceptance of the Convention is well known and need not be elaborated here.

My delegation wishes to acknowledge the perseverance of the international community in overcoming the obstacles to universal participation in the Convention through a process of dialogue and consultation. The initiative taken by the United Nations to convene informal consultations was certainly helpful.

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The consultations, which began four years ago, on 19 July 1990, have led to the draft Agreement before us today. The acceptance by all of us here of this Agreement will symbolize the universal acceptance of the Convention itself.

My delegation is especially pleased that this package of compromises represented by the Agreement did not erode the fundamental concept of the area of the deep seabed being the common heritage of mankind. Through the adoption of the draft resolution today, the United Nations will usher in a new era with regard to the peaceful uses of the sea and ocean space. We are confident that the adoption of the Agreement and its acceptance by all of us here will pave the way for full and effective universal participation in the Convention itself.

In conclusion, my delegation wishes to express our support for this Agreement, which all of us present have worked so hard to achieve. It is our fervent hope that the compromises reached and the understandings arrived at will be fully implemented.

Mr. Macedo (Mexico) *(interpretation from Spanish)*: The Government of Mexico expresses its satisfaction at the conclusion of the consultations held by the Secretary-General to resolve the differences with regard to Part XI of the United Nations Convention on the Law of the Sea. The result can be found in the draft Agreement to be adopted on this occasion by the General Assembly.

Mexico was the third State to ratify the Convention in 1983, after having participated actively in the work of the Conference, in the full belief that that instrument was the best way of achieving a legal order which would enable all States to enjoy the benefits of the seas. That is the spirit which today motivates Mexico's presence here and which prompted us to promote the process which is now coming to an end.

The Agreement relating to the Implementation of Part XI obliges us to recall the approach adopted by the Conference in the negotiating process of the Convention. At that time, it was clearly demonstrated that an effective international law of the sea could be achieved only if it were based on two fundamental principles whose validity could not be called into question: first, the unified character of the Convention and, secondly, the need for it to enjoy universal participation.

On the one hand, it has been recognized that all uses of the oceans are intimately related and, hence, that their regulation must be comprehensive. The Convention represents a delicate balance between the legitimate interests of all States in the oceans. For that reason, the Convention was carefully negotiated as an integrated whole, that being the only way to satisfy the most varied aspirations.

On the other hand, it is clear that the Convention can be fully effective only if it is universally accepted. The breakdown in the consensus at the Conference in April 1982 was at that time a regrettable event that compromised the viability of the Convention. The international community, however, did not lose hope that dialogue and reason would prevail and that those States that were unable to sign, ratify or accede to the Convention would eventually do so.

When Mexico aligned itself with the initiative of the Secretary-General, it did so in the belief that the result of the process of dialogue concerning Part XI would contribute to achieving the universality of the Convention, but always on the basis of the premise that that instrument would have a unified character.

Therefore, Mexico joined in the exercise of negotiating the draft Agreement relating to the Implementation of Part XI because it recognized that there had been a fundamental change in the circumstances which, in preventing the exploitation of the seabed in the form provided for by the Convention, would have a negative effect on the accomplishment of its goal and purpose. It follows that, to avoid frustrating that end, and to ensure that the Convention would be viable, it was necessary to adapt Part XI to the current realities.

However, the fact of having entered into a negotiating process on the deep-seabed mining regime when differences existed cannot imply a revision of the numerous principles of the Convention that had already been consolidated as norms of international customary law. Thus, the principle that the Area and its resources are the common heritage of mankind is still entirely valid and cannot be called into question in this or any other forum.

Furthermore, it must be understood that the revision of Part XI of the Convention does not at any time mean the possibility of revising other aspects of the Convention. The draft Agreement relating to the Implementation of Part XI, as has already been said, was arrived at only because there had been a fundamental change in the circumstances surrounding the deep-seabed

mining regime and, hence, it has an exceptional character. The international community must now ensure that all the provisions of the Convention are fully recognized as international law. Failure to do so would run the risk of endangering the establishment of a legal order for the oceans. Hence, only ratification of or accession to the Convention and strict compliance with it by all States will guarantee that this instrument will serve its purpose.

Once the concerns of all the States that had differences over the ocean mining regime provided for in the Convention had been satisfied, there remained no valid argument to prevent them from ratifying or acceding to the Convention. The steps taken so far are not sufficient to demonstrate commitment to the universality of the Convention. The fact that certain provisions of Part XI have been revised is no guarantee that those countries will ratify or accede to the Convention. Unequivocal compliance with such a commitment will occur when those States that have not done so ratify or accede to the Convention. It is therefore worth recalling that the Convention has to date been ratified practically only by developing countries. The Government of Mexico makes an emphatic appeal to those States that have not ratified the Convention to do so as soon as possible.

Mexico will vote in favour of the draft resolution, whose adoption will lead to opening the Agreement for signature. This is a token of our interest in finally seeing resolved the differences regarding Part XI of the Convention. However, Mexico is not yet in a position to sign the Agreement. Mexico will be able to sign the Agreement and to express its willingness to be bound by it only when there are more positive signs that the Convention will be ratified by those States that up to now have, unfortunately, refrained from participating in the Convention's regime on the seas.

Only then will we be sure that the commitment made in initiating the Secretary-General's consultations to adapt Part XI to the political and economic changes with a view to attaining universal participation in the Convention has been met. We hope to be able to be bound by the Agreement as soon as we see progress towards the participation of all States in the Convention.

Furthermore, as a State that ratified the Convention, it is incumbent on Mexico to assume duties and responsibilities that are very different from those to be assumed by States which to date have not accepted the Convention. That prevents us for the time being from provisionally implementing the Agreement. Because the Convention was endorsed by the Senate of the Republic, the Government of Mexico is obliged to secure Senate approval with regard to the Agreement before acting in any way that might modify the approval originally granted. It is for that reason that Mexico will adopt the Agreement provisionally, but only when it has been signed or ratified, or when it has been acceded to in accordance with our internal constitutional procedures.

The Convention is the clearest example of the way in which international cooperation allows us to resolve differences and to focus on a single instrument the aspirations of States which have widely varying interests. Mexico reiterates here its commitment to the regime enshrined in the Convention and will do everything in its power to continue to contribute to achieving its universality.

Mr. Li Zhaoxing (China) (interpretation from Chinese): First of all, please allow me to extend to you, Mr. President, on behalf of the Chinese delegation, congratulations on the manner in which you are presiding over this historic resumed session of the General Assembly.

Agreement on Part XI of the United Nations Convention on the Law of the Sea has finally been reached after four years of tireless consultations, which have resulted in the production and formal submission to the General Assembly for approval of the draft resolution and the draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Chinese delegation would like to thank Secretary-General Boutros-Ghali for his guidance of the consultations to a successful conclusion. We also wish to thank former Secretary-General Pérez de Cuéllar for his efforts in initiating the consultations.

The United Nations Convention on the Law of the Sea is, to this date, the most comprehensive and influential international convention on the management of the sea. Though there is still room for improvement in this Convention, it basically reflects the common aspiration and interests of the overwhelming majority of the countries of the world in the exploration and uses of the sea, thus receiving the international community's universal attention. The delay in the putting into effect of, and universal participation in, the Convention is due mainly to the fact that a number of countries had difficulties in accepting some provisions of Part XI. The present draft Agreement reflects the results of the

consultations presided over by the Secretary-General in the past four years; makes major adjustments in the regulations concerning the decision-making process of the various agencies of the International Seabed Authority, the functions and operating procedures of the Enterprise and the production policies of international seabed mining; reduces the financial burdens of the States parties and miners of the deep seabed; abolishes production quotas; and takes into account different interests and requests of the parties concerned - thus paving the way for the universal acceptance of the Convention.

It should be pointed out in particular that the draft Agreement provides that countries which consent to the adoption of or sign the Agreement can provisionally apply it before its entry into force, and stipulates that the countries which have yet to ratify or accede to the 1982 Convention can continue, in line with certain conditions, to be provisional members of the Authority during a period of time after the Agreement comes into effect and can enjoy the same rights and obligations as the formal members. The provisions concerning provisional application and the arrangement on the system for provisional members have left time for the countries that have yet to ratify or accede to the Convention to do so, and are therefore conducive to the universal acceptance of the Convention.

China has actively participated all along in the informal consultations presided over by the Secretary-General. We are of the view that the draft Agreement has removed difficulties a number of countries have concerning certain provisions of Part XI and has safeguarded the principle of the common heritage of mankind, while giving consideration to the specific conditions in countries that have consented to the Convention and in those that have yet to do so. The Chinese Government takes a positive attitude towards, and is in favour of, the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. We hope that the current resumed session will give these texts its approval.

China will sign the Agreement, subject to ratification, when it is opened for signature and will provisionally apply it from 16 November 1994.

Mr. Ostrovsky (Russian Federation) (interpretation from Russian): Yesterday a great deal was said about the importance of the United Nations Convention on the Law of the Sea, and we do not wish to be repetitious. We merely wish to say that we fully share that view.

With regard to the draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, prepared in the consultations held under the auspices of the Secretary-General, in our view this draft Agreement is indubitably a step forward, with the goal of making the Convention generally acceptable - indeed universal.

At the same time, if we base ourselves on real facts, and do not get into superficial aspects, we cannot but recognize that the draft Agreement is not sufficiently worked out or consistent. Hence, the question naturally arises: could it, in its present form, achieve its goals? We have some serious doubts in this regard.

In the Secretary-General's report, the view is expressed that Russia

> "made a statement reserving its position in view of the fact that a number of proposals it had made had not been reflected in the draft Agreement". *(A/48/950, para. 26)*

That assertion is an oversimplification of the situation and therefore gives a wrong impression of it. The point is not that not all of Russia's amendments were adopted: the crux of the matter is that on the major issues the draft Agreement lacks clear provisions that could guarantee successful cooperation in this area while taking duly into account the interests of all countries.

This relates first and foremost to the interpretation of the concept of the "common heritage of mankind", which was referred to here yesterday by the representatives of Malta and a number of other States. The mineral resources of the seabed are open for use by all States on an equal footing. Therefore, no single State or group of States can claim control over the activities of other States. This is a major issue that affects the fundamental and generally recognized principles of international law. Nevertheless, paragraph 1 of section 1 of the annex to the agreement contains provisions that could be interpreted as contradicting these principles.

There is another matter of crucial importance.

During the consultations held under the auspices of the Secretary-General, it was unanimously recognized that the implementation of Part XI of the Convention should not entail any unjustified expenses. This problem becomes particularly sensitive in connection with the fact that we are today setting up the International Seabed

Authority, which for at least 15 years will not be carrying out any real activities because, as experts have confirmed, the commercial exploitation of the seabed resources will not commence until then.

We have absolutely no doubt as to the sincerity of those who have called for, and continue to call for, the minimization of expenses. However, the Agreement has no provisions that can serve as guidelines for this purpose. Such general guidelines as the need to promote cost-effectiveness cannot be seriously regarded as a reliable disincentive.

We feel that all this threatens to result in the uncontrolled growth of unjustified expenses, and the validity of our concerns is borne out by the facts. Very recently, during the course of consultations, those who supported covering the administrative costs of the newly created seabed organization out of the United Nations budget stated that this should not lead to a budgetary increase. However, during the initial discussion of this problem in the Fifth Committee, it was clearly demonstrated that this is but wishful thinking. How can we, in fact, put this intention into practice when there is no mention of it in the Agreement or in any other document? How can we assume the responsibility of adopting a provisional Agreement without knowing what the budgetary implications are?

Other factors have already arisen that have nothing to do with the cost-effectiveness referred to in the Agreement. These include the attempts to establish high-paying positions that are simply not yet needed and the desire to hold a three-day session of the Assembly in Jamaica in November. That session that was initially planned, in accordance with the Convention, for the holding of elections, but those elections have been postponed until later. Thus, it is not clear what the Assembly will be working on in November, how we can justify the related costs or whether everyone will agree to shoulder them.

I should like to have some clarification here. It is not just a question of that three-day session, which we do not even need to discuss today; but then there is the question of whether, following that session, there will not be other similar sessions requiring tremendous expenditures that are neither justified by the interests involved nor in line with the Agreement's criterion of cost-effectiveness. Previous experience shows us that such concerns are usually well founded.

There is, in our view, another basic issue. In section 1, paragraph 6, of the annex to the Agreement, we have the principle of non-discrimination between the pioneer and potential investors. However, we have full reason to conclude that no one intends to adhere to this principle. This became apparent as soon as we tried to include in the Agreement indications regarding the need for a non-discriminatory approach to the payment of the annual fee of $1 million. All this caused the Russian delegation to reserve expression of its position when the consultations with respect to the final documents were concluded. It should be noted that a number of countries subsequently expressed to us their concerns about the position of the Russian Federation.

In this regard, we wish to state clearly that we understand these concerns, that we are fully aware of the importance of universal participation in the United Nations Convention on the Law of the Sea and that we have made, and continue to make, every possible effort to establish the necessary conditions for universal cooperation in this area. However, a number of key issues remain pending, and in these circumstances the Russian delegation is forced, not without regret, to state that it is not able to support the Agreement relating to the Implementation of Part XI of the Convention, which was drafted during consultations under the auspices of the Secretary-General.

Mr. Linton (Sweden): The delegation of Sweden is particularly pleased to participate in the adoption of the draft resolution and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. It is an honour for me to announce that the Government of Sweden has decided to sponsor the draft resolution and sign the Agreement.

Sweden notes with great satisfaction that the efforts by the Secretary-General, after four years of intensive consultations, have led to concrete results. All of us bear in mind those 12 long years since the adoption of the Convention, an instrument which is true proof of the codification and progressive development of international law. The Agreement on the Implementation of Part XI represents a major step towards the universal acceptance of a complete system of rules and principles of the law of the sea. The entry into force, on 16 November 1994, of the 1982 Convention, acceptable to the largest possible number of States, marks a historic milestone.

Sweden has always held the opinion that the system contained in Part XI of the Convention was too cumbersome and that it generated costs that were disproportionate to the financial gains that could be acquired from deep-seabed mining.

Sweden believes that the best strategy for developing an efficient and cost-effective Authority would be to take the evolutionary approach. Such an approach is found in the Agreement before us.

With respect to the Enterprise, we hold the view that this institution should function in accordance with strictly commercial criteria.

The growing concern for the global environment and for the protection and preservation of living resources, as referred to in the preamble to the draft Agreement, is particularly welcomed by Sweden.

Although the prospect of deep sea mining is distant, Sweden believes that the present draft Agreement constitutes a good basis for administrating the common heritage of mankind in the best interest of all countries.

The spirit of cooperation that prevailed during the informal consultations underlines the fact that the 1982 Convention is a major development of international law and that there is a real commitment on behalf of the international community to secure a wide acceptance of the Convention. With the conclusion of the Agreement on the Implementation of Part XI of the 1982 Convention, the last hindrance to universal acceptance has been eliminated.

The efforts undertaken by two Secretaries-General have been carried out in an atmosphere of pragmatism and political realism. With remarkable diplomatic skill, their Legal Counsels and advisers have managed to achieve results on the complicated questions that were before us. Under-Secretaries-General Hans Corell, Judge Carl-August Fleischhauer and Mr. Jean-Pierre Levy deserve our recognition.

I would also like to extend our gratitude to those colleagues from delegations who, by constructive thinking and hard work, have paved the way for this Agreement. We are, of course, all well aware of the instrumental role carried out by Ambassador Satya Nandan in bringing the various interest groups together.

Finally, I wish to say - and I believe that I reflect the views of the group over which I have the honour to preside, the Friends of the Convention - that we all welcome the draft resolution and the Agreement. We wish to encourage all States to participate in its adoption. The role of our group - which comprises Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden and Switzerland - has been to work towards a universal and widely accepted Convention on the Law of the Sea. The adoption by the Assembly of this Agreement will represent the achievement of this objective.

Mr. Fife (Norway): Because of its geography and natural environment, Norway has throughout its history taken an active interest in maritime issues. For the representatives and other officials present here today who participated in the Third United Nations Conference on the Law of the Sea, it will suffice to recall the contributions of Mr. Jens Evensen, which epitomized Norway's genuine concern for the multilateral process of codification and progressive development of international law in this field.

Since signing the law of the sea Convention at Montego Bay on 10 December 1982, Norway has continued to take an active part in the deliberations in United Nations forums on the law of the sea. These include the consultations on Part XI of the Convention that led to the draft resolution now before the Assembly for adoption. Particular mention should also be made of the ongoing Conference on Straddling Fish Stocks and Highly Migratory Species, which deals with essential issues of sustainable development to which my Government attaches the utmost importance.

Norway wishes to associate itself wholeheartedly with those who have expressed their gratitude to Secretaries-General Pérez de Cuéllar and Boutros-Ghali, as well as to their Legal Counsels and advisers, for their remarkable efforts in organizing and bringing to a successful conclusion the consultations on Part XI of the Convention. These consultations, from 1990 to 1994, have laid the groundwork for solutions to the outstanding issues concerning Part XI of the Convention, which will render the body of law regulating seabed mining acceptable to a broader group of countries.

Norway supports the spirit of compromise and realism that has inspired the modifications that will make institutions and procedures less expensive and bureaucratic, and at the same time more compatible with the market realities that will govern the development of deep-seabed mineral resources. That is why Norway has

cosponsored the draft resolution so ably introduced by the representative of Fiji, Ambassador Nandan.

Mr. Hudyma (Ukraine): The adoption in 1982 of the United Nations Convention on the Law of the Sea was a milestone event in the history of international law. It is a well-known fact that this Convention is the most detailed treaty and the most representative universal effort to codify international law. Immediately upon its adoption it exerted a dominant impact on the conduct of States in marine-related matters. The Convention is undoubtedly an outstanding contribution to the maintenance of peace, justice and progress in many areas.

In its legislative practice Ukraine follows most closely the letter and spirit of the Convention. In the spirit of cooperation envisaged by the Convention, Ukraine continues the process of reviewing marine-related treaties with a view to becoming party to some of them. In accordance with the Law of Ukraine on the Applicability of International Treaties in the Territory of Ukraine, the treaties to which Ukraine is a Party form

> "an inalienable part of the national legislation of Ukraine and are applied in accordance with the procedures specified in respect of norms of national legislation".

This means that any such treaty, including the United Nations Convention on the Law of the Sea, upon its eventual ratification by Ukraine, could be invoked in any Ukrainian court.

There can be no doubt that the United Nations Convention on the Law of the Sea deserves universal participation. It is clear that unless all States participate, the benefits of the Convention will never be complete. Unfortunately until now certain difficulties have existed relating to the regime for the mining of minerals from the deep seabed. These difficulties precluded participation in the Convention by some States. Thanks to the initiative of the Secretary-General of the United Nations, these difficulties have been overcome.

Through the adoption of the Agreement relating to the Implementation of Part XI of the Convention, the door will be open to universal participation in the United Nations charter on the law of the sea. We share the view expressed yesterday by Ambassador Satya Nandan of Fiji that the adoption of the Agreement will establish another milestone in the development of the modern international law of the sea.

In this regard, the delegation of Ukraine would like to express its most sincere appreciation to the present Secretary-General as well as to his predecessor for having initiated and successfully concluded the informal consultations. I also wish to express our sincere gratitude to Mr. Hans Corell, Under-Secretary-General and Legal Counsel of the United Nations, and his predecessor Judge Carl-August Fleischhauer.

As a convention in itself, this Agreement is not, in our opinion, a totally ideal legal instrument. More importantly, however, it is the result of a political compromise. Ukraine supports in general this political compromise and will vote in favour of the Agreement.

During the last round of the Secretary-General's consultations, Ukraine and a number of other Eastern European States insisted on the equitable and just representation of all regional groups of States in the Council of the International Seabed Authority. As a result of negotiations, the compromise formulation was drafted. This formulation was called the "Ukrainian clause" by Ambassador Jalal of Indonesia, Chairman of the Group of 77. This Understanding, which I should like to read out, will be adopted at the same time as the draft resolution and the Agreement.

> "Once there is a widespread participation in the International Seabed Authority and the number of members of each regional group participating in the Authority is substantially similar to its membership in the United Nations, it is understood that each regional group would be represented in the Council of the Authority as a whole by at least three members" *(A/48/950, annex II)*.

The adoption of the Agreement and entry into force of the Convention will fully activate the role of the United Nations and its Secretariat as a body in charge of the global monitoring of the law of the sea, and an organizer of the cooperation of States in the marine-related field. One of the major tasks of the United Nations in this respect is to assist States in the implementation of the Convention and in the development of a consistent and uniform approach to the new legal regime for the oceans. Equally important is the continuation of United Nations assistance to States in their national, subregional and regional efforts towards the full realization of the benefits provided by the Convention.

Within the United Nations Secretariat, the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs has played a special role. We view this Division as a *de facto* secretariat of the Convention. With the entry into force of the Convention, the Division will be subject to even greater demands in the future. It is essential to ensure that the Division will have adequate resources to meet these demands.

At the same time, we share the view expressed by some delegations, in particular by the representative of Germany on behalf of the European Union, that the costs of the future Seabed Authority should be kept within the appropriate framework. The next session of the Preparatory Commission of the International Seabed Authority should consider this issue carefully.

Mr. Huaraka (Namibia): Today marks another significant milestone in the history of the United Nations and in the evolution of international law, in particular the law of the sea. Today the international community is looking forward to adopting the final Agreement on Part XI of the United Nations Convention on the Law of the Sea. This is a unique achievement because it will make universal adherence to the Convention possible. The sooner the Convention becomes universal, the more successful it will be in making a significant contribution to the international legal maritime order.

Almost 12 years ago, in Montego Bay, Jamaica - on 10 December 1982 - the United Nations Conference on the Law of the Sea adopted the Convention on the Law of the Sea. On that same day, 119 countries signed the Convention - the largest number of States ever to sign a treaty on the day of its adoption. This shows the tremendous importance that the international community attributed to this Convention. It is important also to note that of the 119 States that signed the Convention on that day, 92 were developing countries. This unprecedented record demonstrates the importance the developing countries attach to the Convention.

Some concepts in the Convention - for example, the exclusive economic zone, one of the most significant - emerged as a result of the initiative of the developing countries, with the active participation of the African Group. Furthermore, this principle is now generally accepted by the international community, even before its formal entry into force. It has crystallized into a principle of customary international law, through a treaty provision, and hence, many of its provisions have been implemented by a number of States - for example, the establishment of a 200-mile exclusive economic zone, a 12-mile territorial sea and several provisions related to the conservation and management of living marine resources.

Another very significant concept in the Convention is its declaration of the deep seabed outside national jurisdiction as the "common heritage of mankind". In this connection, and for the benefit of all countries, developed and developing, the area of the deep seabed can better be exploited by a regime that will oversee and control the exploration and exploitation of the minerals of the deep seabed. At this juncture, it is fitting to recognize the excellent work done so far by the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea.

Although many countries found most provisions of the 1982 law of the sea Convention consistent with their interests and equally important to all nations, Part XI of the Convention posed serious problems to a number of countries - in particular the developed countries - and consequently the Convention as a whole remained unacceptable to them. Those States have not yet ratified or acceded to the Convention.

Namibia considers the law of the sea Convention an important international instrument. It participated actively throughout the process of negotiations and, finally, through the United Nations Council for Namibia, the legal interim authority of the Territory at that time, signed and ratified the Convention. Indeed, Namibia, on 18 April 1983, was the fifth State to ratify the Convention. Upon independence, Namibia immediately enacted the necessary law to make the United Nations Convention on the Law of the Sea part of Namibian legislation.

As is well known to members at this session, Namibia is among the countries whose marine resources were exploited and plundered mercilessly by foreign trawlers during its pre-independence period. Upon independence, Namibia therefore proclaimed a 200-nautical-mile exclusive economic zone, as provided for in the United Nations Convention on the Law of the Sea. The declaration placed Namibia in a better position to protect its marine resources, especially from illegal fishing.

Namibia welcomes the Secretary-General's report in document A/48/950 of 9 June 1994 concerning outstanding issues relating to the deep-seabed mining

provisions of the United Nations Convention on the Law of the Sea. At this juncture, it is appropriate for my delegation to express its gratitude to Secretaries-General Javier Pérez de Cuéllar and Boutros Boutros-Ghali for their determination to see things through and stay the course during the difficult four years of negotiations on Part XI. The report identified nine issues as presenting major difficulties for a number of States. It is heartening to note that in a spirit of compromise agreement has been reached on almost all the aspects of Part XI that had posed some difficulties. This is indeed a great achievement.

However, my delegation would like to reiterate its position regarding the decision-making process in the organs of the Authority and also its position on the Enterprise. Namibia considers decision-making in any organization to be the most fundamental and probably the most important process for its proper management and smooth running. In this regard, as far as decision-making in the Council is concerned, Namibia maintains that, in a spirit of cooperation, equality and justice, all the categories, as indicated in article 161 (1) of the Convention, should be granted protective rights. In this era of democracy and openness, it is indeed imperative. Secondly, we believe that decisions should be reached by consensus. But where there is no agreement, voting should take place.

With regard to the Enterprise, as the organ of the Authority which shall carry out activities in the Area as well as the transporting, processing and marketing of minerals recovered from the Area, my delegation believes that unless the Enterprise is granted favourable conditions for its proper and effective functioning, it will be unable to fulfil its intended role. Therefore, the evolutionary approach and joint venture envisaged in the Agreement is quite acceptable to my delegation, but this should not be used to undermine the early and effective operation of the Enterprise.

In conclusion, my delegation is attending this resumed forty-eighth session with the objective of signing the Agreement on Part XI of the Convention on the Law of the Sea. Namibia cosponsored the draft resolution and will on Friday, 29 July 1994 -this time as an independent sovereign State - sign the Agreement. This will demonstrate the commitment of the Government of the Republic of Namibia to the principles of international law. Furthermore, my delegation is pleased to join with others in celebrating this historic occasion.

Mr. Steward (South Africa): The United Nations Convention on the Law of the Sea provides a comprehensive international legal regime for the sustainable development of the marine and coastal environments, including the responsible distribution and exploration of the deep seabed resources. Major concerns about outstanding issues on this latter aspect now belong to the past, thanks to the achievement of international consensus following four years of intense negotiations. We congratulate all those States, both developed and developing, as well as the individuals involved in forging this important consensus with the constructive assistance of the Secretariat.

South Africa welcomes the successful conclusion of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. This is a significant achievement in multilateral diplomacy, and marks a further milestone in the history of the law of the sea, opening the way for universal acceptance of the Convention and its provisions.

South Africa supports the Agreement and considers it an integral element of the Convention. As a signatory to the Convention, South Africa will in due course take the necessary steps to sign the Agreement, whereafter it intends to initiate the domestic process of ratification of the Agreement and the Convention. Ratification is subject to parliamentary consideration and approval.

As a coastal country, situated between the vast Atlantic and Indian Oceans, South Africa is fully aware of its responsibilities and obligations in both the marine and maritime fields. Accordingly, our national legislation has gradually been brought into line with provisions of the Convention. A new Bill on Maritime Zones for South Africa will shortly be tabled in Parliament.

South Africa shares global concerns about the degradation of the marine environment. South African initiatives and endeavours to conserve coastal areas and marine ecosystems are implemented in accordance with the relevant provisions of the Convention.

The Convention and the Agreement this Assembly will adopt today contain the guiding principles for the implementation of sound policies governing all the oceans and their resources, including deep-seabed-related activities. South Africa is committed to these principles and will fully cooperate at the regional and international levels to ensure the preservation of living and non-living

marine resources to the benefit of all mankind, for posterity and for the very survival of the treasures of the Earth's oceans.

Mr. Piriz Ballon (Uruguay) *(interpretation from Spanish):* When, in 1982, the Eastern Republic of Uruguay signed the United Nations Convention on the Law of the Sea in Montego Bay, it did so as the culmination of a long and arduous process of negotiations that finally led to the approval of a true code of the sea. This code covers the most important topics relating to the utilization and preservation of its resources, provides clear principles to establish the rights of States on territorial seas, the exclusive economic zone, the continental shelf, the high seas and the resources of the Area.

Throughout the negotiations on the Convention, Uruguay, as a member of the Group of territorial countries, made its approaches more flexible, in a spirit of broad compromise, to achieve an agreement that would ensure consensus among the international community on the text of the Convention.

In signing the Convention and in our Parliament, ratifying it, as provided for by the national Constitution, Uruguay joined the States that desired and sought the entry into force of the Convention.

That position demonstrates our country's interest in reaffirming once more that in relations among States opposing interests should be the subject of negotiations leading to the adoption of norms of international law.

That is why we viewed with concern the slowness in obtaining the 60 ratifications required for the entry into force of the Convention. Fortunately, that goal has been achieved, and on 16 November 1994 the organs provided for in it will be established and all the provisions will begin to regulate the very diverse questions connected with the marine activities of States.

From the experience acquired in the negotiation of the Convention and during the adoption of the text that we signed, we noted that a large number of States were unable to participate in the agreement on the text of the Convention because of their differences on the provisions contained in Part XI, on the exploitation of the existing resources of the area.

In my country's view, a reaffirmation that the existing resources of the area are the common heritage of mankind, in whose administration and exploitation all States have the right to participate, is one of the basic principles that must govern relations in connection with the law of the sea. Any limitation on that principle would have prevented us from participating in any agreement.

Because of that background that we have just described, we were optimistic about the negotiations initiated under the auspices of the Secretary-General with a view to seeking the understanding that could help us overcome the limitations of some States in regard to accepting Part XI of the Convention, limitations that prevented them from becoming parties to it.

The draft resolution and the draft Agreement before us is acceptable to our delegation, basically because an effort to achieve universal participation in the United Nations Convention on the Law of the Sea necessarily implies that the concessions achieved in it cannot be of benefit to any State that has not previously expressed, or simultaneously expressed, its consent to be bound by the Convention.

All the negotiating efforts have been undertaken with a view to achieving as soon as possible universal participation in the Convention.

Hence, we shall vote in favour of the draft resolution before us, and our signature of the Agreement will depend, as our Constitution requires, on parliamentary approval - in other words, it will be subject to ratification.

We do not wish to conclude our statement without expressing our special gratitude for the initiative which Mr. Pérez de Cuéllar started and which Secretary-General Boutros-Ghali terminated successfully. The efforts made by their representatives were of basic importance in the achievement of the texts before us today.

We wish also to emphasize and commend the work of Ambassador Nandan of Fiji, which gave shape and content to a complex negotiation, which we hope will achieve its goals

Mr. Kharrazi (Islamic Republic of Iran): I should like to join other delegations in thanking you, Mr. President, for convening these plenary meetings. I should also like to express my appreciation to the Secretary-General for his report, in document A/48/950, concerning the consultations on the outstanding issues

relating to the deep-seabed mining provisions of the United Nations Convention on the Law of the Sea.

The United Nations Convention on the Law of the Sea is a set of legal norms and principles governing all forms of human activities in areas concerning more than two thirds of the planet. It is the result of skilful and lengthy discussions and, indeed, is a compromise text. On the other hand, during the past 12 years, this Convention has inspired a large number of national laws, including those of my country, and has made State practice more homogeneous in many areas.

My Government, as one of the signatories of the Convention, is committed to promoting adherence to it by all States. The participation of the entire international community is certainly necessary for the effective implementation of the provisions of the Convention.

The delegation of the Islamic Republic of Iran will support the adoption of the draft resolution and the draft Agreement in order to reaffirm its basic conviction that the integrity and the unified character of the Convention, and universal participation therein, should be assured in every possible way. It is our firm belief that all - and especially the group of developed countries as a whole - should remain faithful to the provisions of Part XI of the Convention and the Agreement together, and apply them in good faith. In my delegation's view, a major step to that end would be for all measures that have been taken so far and that are not in conformity with the objective and purpose of the Convention to be reviewed to ensure that all legal obstacles in the way of the universality of the Convention are removed effectively. National legislation enacted in some industrial countries regarding the exploration and exploitation of mineral resources of the deep seabed and concessions and licenses granted to their nationals and corporations to that end are among the measures that need to be mentioned here.

One point that is worthy of note is the possibility of failure to implement the Convention and the Agreement in future because some major industrial countries still refrain from becoming parties to them and complying with them in good faith. In that regard, reference should be made here to article 6, paragraph 1 of the Agreement, which provides for its entry into force when 40 States have established their consent to be bound by it, while the participation of only five developed States from among those mentioned in resolution II has been deemed sufficient.

As regards the principle of the common heritage of mankind, which is the main logic behind Part XI of the Convention, my delegation would like to draw attention to some of the provisions of the Agreement that have some bearing on that principle. Although it was the intention of the drafters of the Convention that the exploration phase of the deep-sea mining regime should be terminated upon the entry into force of the Convention, and the exploitation phase should commence thereafter, paragraphs 6 (a)(ii) and 9 of section 1 of the annex to the Agreement extend the exploration phase for about two more decades. This would mean, partially, that the future of deep-seabed mining and the benefits to be derived therefrom by the international community as a whole would be kept ambiguous for an extended period of time.

Another important point is that, although the principle of the common heritage of mankind has been reaffirmed in the preambles to both the draft resolution and the draft Agreement, the main element for bringing this principle into effect - that is, the establishment of a full-fledged Enterprise conducting independent activities in the area on an equal footing with other operators - has been transformed in such a way that it would not meet that requirement.

Despite the fact that the Enterprise is to conduct its initial deep seabed mining operations through joint ventures, it has been deprived of any preferential treatment from the Authority. One may recall that in accordance with article 151 (5) of the Convention, a guaranteed quantity of nickel from the available production ceiling is reserved to the Enterprise for its initial operations. In accordance with Article 11 (3), of annex IV to the Convention, the financing of the Enterprise's operations in its first mine site is to be borne by States Parties so that it can initiate activities as quickly and effectively as possible. With the deletion of these provisions, one can hardly conceive of a situation where the institution could reach the stage of being able to engage in commercial activities and compete with other operations, as the principle of the common heritage of mankind requires.

My delegation therefore maintains that the future Authority should seek possible ways and means to help the Enterprise overcome these problems and conduct its independent activities as soon as economic circumstances permit.

Mr. Treves (Italy): Italy salutes the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea as a document of outstanding importance. This Agreement succeeds in eliminating the obstacles which prevented a considerable number of industrialized countries, including Italy, from ratifying the United Nations Convention on the Law of the Sea, a Convention which we recognized from the outset as a major achievement of international cooperation.

The Agreement we are about to adopt establishes a reasonable regime for deep-seabed mining corresponding to today's economic realities without abandoning the principle of the common heritage of mankind. In so doing, it opens the way for the universality of the Convention, an objective Italy has been actively pursuing in all available forums since 1982. We are particularly satisfied to see that our efforts - most recently, in the elaboration of the "Boat paper", from which the implementing Agreement is derived - have now been crowned with a positive result.

In our view, the advantages all States obtain with the adoption of the implementing Agreement are well worth the concessions that all sides have made in order to reach it. Such advantages consist in making it possible for the Convention to soon become a treaty instrument applicable to States of all areas of the world and of every political and economic orientation. This will stabilize the existing customary law of the sea, provide a framework for the protection of the marine environment and channel disputes through peaceful means of settlement. The establishment of the International Tribunal for the Law of the Sea is the visible sign of the will, expressed in the Convention, to consolidate the rule of law in the seas and oceans.

Unavoidably, a few problems are still present. Some of them, such as those concerning the position of pioneer investors, we hope will be solved during the imminent session of the Preparatory Commission. Others - in particular that of ensuring that the Tribunal for the Law of the Sea will be established in such a way as to reflect in a balanced manner all the main legal systems and political groupings of the world - will have to be sorted out over the next few months.

This notwithstanding, the basic framework is in place, and this is our main achievement today.

Italy, of course, fully shares and supports the points made by the representative of Germany yesterday in his statement on behalf of the European Union. We felt, however, that we could not remain silent and fail to express directly our satisfaction during this momentous event. We wish to take this opportunity to announce that Italy is cosponsoring the draft resolution and that tomorrow it will sign the Agreement.

Mr. Kamunanwire (Uganda): It gives me great pleasure to take part in this historic occasion in support of the adoption of the draft resolution and the opening for signature of the Agreement on the law of the sea.

Uganda has actively participated in the crucial negotiation of the Agreement before us over the last four years, after the Secretary-General reopened informal consultations on Part XI of the 1982 United Nations Convention on the Law of the Sea. I am therefore delighted that the consultations were fruitful and that as a result we have a draft resolution and an Agreement, so aptly introduced by Fiji and sponsored by countries representing a broad spectrum of interests.

I should also like to express deep appreciation to the Chairman and the members of the Group of 77, who kept the consultations on this historic Agreement at the forefront of their agenda and thereby ensured a satisfactory degree of participation and consensus in the informal consultations.

The reaffirmation of the principle of the common heritage of mankind, as enshrined in the draft resolution, is of particular interest to all land-locked countries, which include Uganda, inasmuch as their distance from the sea increases their reliance on its being free and accessible. It is therefore gratifying that the draft resolution and Agreement have received wide support, and it is my sincere hope that participation will be just as wide and enthusiastic.

The Agreement is a further attestation that the international community is increasingly aware of the need to develop responsibly and that States are indeed determined to strike a balance between the commercial advantages that new technologies afford with the need to preserve and protect their environment for the benefit of all, so that when pioneer investors and those who follow them into the unexplored area of deep seabed mining begin their commercial activities they will abide by a regime which is internationally acceptable and ecologically sound.

Uganda has already signed and ratified the 1982 Convention. I therefore look forward to joining other Member States in adopting the draft resolution, and

signing the Agreement tomorrow, after which it will be submitted to the appropriate national authorities for ratification.

Mr. Pursoo (Grenada), Vice-President, took the Chair.

Mr. Cabello (Paraguay) *(interpretation from Spanish):* These meetings of the General Assembly, convened under the item on the law of the sea, is an important step for the international community in its search for universal legislation for the oceans. The Assembly must be aware of the importance of the imminent entry into force of the United Nations Convention on the Law of the Sea of 1982, which is not only a fundamental milestone in the progress made in international maritime law, but also an instrument that will influence future legislation in various areas and consolidate the process of codifying international law, a longstanding aspiration of mankind and one of the principal purpose of the United Nations Charter.

Having obtained the necessary number of ratifications for the Convention to enter into force, the States Parties must now achieve a broader universality and begin the rational and controlled exploitation of the resources of the sea, a common heritage of mankind.

For Paraguay, a land-locked country, its responsibility is even greater in the search for consensus that will allow for the signing and ratification of the Convention by all peoples of the planet. We therefore have no hesitation whatsoever in stating our support for the draft Agreement relating to the Implementation of Part XI of the Convention and its annex. That position is based on our desire to facilitate the access of a greater number of States to these norms and the pragmatic implementation of its provisions without distorting the core import of the international instrument. We believe that this has been achieved in the text before us today.

That having being established, the institutions provided for in the Convention will be able to begin their work confident that they are taking decisions on behalf of all the people of the world, who will thus benefit from the use and exploitation of the seas. Furthermore, we are convinced of the need for the immediate and universal implementation of these norms to guarantee the principle of equity in their use and exploitation and to ensure peace and security in this context.

We hope that the reforms to which the provisions of the Convention are subject will always be inspired - as those who have spoken before us today have mentioned - by the obligation to preserve the integrity of the Convention. Paraguay, a land-locked country and one of the first to ratify the Convention of the Law of the Sea in 1986, feels particularly duty-bound to preserve the spirit that inspired those who for many years contributed to establishing this legal monument, a spirit that was based on the principles of universality, non-discrimination and equal opportunity and participation for all peoples.

Ancient peoples found happiness in their proximity to the sea. Young nations such as ours see and consider the sea as part of their common future.

Mr. Smejkal (Czech Republic) *(interpretation from French):* The year 1994 will finally see the definitive birth of the new law of the sea, marking the culmination of a particularly complex and difficult gestation that has experienced high and low points as well as sometimes surprising revivals - surprising for the non-initiated - over the course of the many years that have elapsed since the Third United Nations Conference on the Law of Sea.

Despite all these vicissitudes - which, let us hope, now belong to the past - the Convention signed at Montego Bay in 1982 will enter into force on 16 November 1994. In this respect, we can now expect that this will eventually occur in favourable and promising conditions, provided that the adoption of the draft resolution containing the text of the draft Agreement relating to the Implementation of Part XI of the Convention, which we are now considering, will allow for and encourage - as we are sure it will - the support of many States for the Convention in its modified form.

In these circumstances, the door will certainly be open to true universal participation, which we feel is highly desirable. It is quite obvious that, in this context, the overlapping of different and largely incompatible legal regimes would but seriously compromise the security and foreseeable nature of the law, and further threaten eventually to become a strong factor for destabilization and conflict within the many activities regulated by the law of the sea. Undoubtedly, on the purely legal level, the collapse of the law of the sea regime remains possible, but we are convinced that those States which have already ratified the Convention will, to express their readiness to be bound by the provisions of the Agreement, resort in great number to the simplified procedures provided for that purpose. For our part, the need for a unified law of the sea and the spirit of compromise that should devolve from it moved and

guided us in our consideration of the draft Agreement that resulted from the Secretary-General's informal consultations.

The Czech Republic is a land-locked State, but it is nevertheless directly affected not only by many issues falling within the provisions of the Convention in general - and the right of access to the sea is in this respect but one instance among others - but also and particularly by the rules applying to the deep seabed, especially in its capacity as a State that is currently cosponsoring a duly registered pioneer investor. We therefore closely followed the debates in the informal consultations and actively participated in the work of the Preparatory Commission. It would be futile, however, to attempt to conceal the fact that the final results do not fully satisfy us. Indeed, we are forced to conclude that, as concerns the membership of the Council of the future Authority, our efforts to make our position heard were unfortunately in vain, although we offered weighty arguments in favour of our decidedly modest claims. We deeply regret this. I will not speak at length on this subject; the representative of Poland did so yesterday, and very well, and I can only endorse the pertinent aspects of his statement.

This being the case, we are realistic and are aware of the incontestable assets of the text before us, which in our opinion ultimately make it a balanced compromise reasonably acceptable to all the members of the international community. To be very brief, it might simply be noted that the Agreement achieves a generally satisfactory synthesis of such highly controversial issues as the Authority's operating costs, the question of basic rights and the general establishment of investors' obligations, the statute of the Enterprise or the transfer of technology. Lastly, with respect to form, the text wisely and most appropriately provides for the provisional implementation of the Agreement.

In conclusion, I should like to emphasize that we will vote in favour of the draft resolution adopting the text of the Agreement relating to the Implementation of Part XI of the 1982 Convention on the Law of the Sea. The Czech Republic intends, moreover, to apply the Agreement provisionally and to sign it as soon as the internal procedures relating to it have all been carried out.

Mr. Monteiro (Cape Verde) *(interpretation from French)*: My delegation's deep concern with the current item on the agenda is shared by many others. As an island State, Cape Verde has lived its entire history in, and bases its future on, a close and multifaceted relationship with the sea.

The need to have available a universal code for the international community's activities *vis-à-vis* the sea, which covers such a large part of the planet, led to the elaboration of a document unanimously viewed as historic: the United Nations Convention on the Law of the Sea. Since its adoption in 1982, this Convention has provided truly valuable motivation and guidance for States' practices and a unique point of reference. Thus my country ratified the Convention and subsequently drew up a new maritime legislative package. We warmly welcome the time, soon to come, when this collective instrument will enter into force.

The item now on the Assembly's agenda covers an extremely important section of the Convention: that of the regime governing the exploitation of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

The regime set out in Part XI of the Convention was not successful - this is a fact - in promoting the broad adherence that is considered vital for the Convention to acquire the character of a universal code. The consultations begun by the former Secretary-General, Mr. Pérez de Cuéllar, and continued by his successor thus became vital.

The Secretary-General's excellent report on the lengthy and complex consultations that took place reminds us fully and precisely of the issues that were at stake at the time. Some concerned adaptations generally recognized as matching the new international scenario; others were aimed at balancing the interests of the protagonists involved.

I feel impelled to voice the general view that we are indebted to the tireless efforts and diplomatic ingenuity of those persons who so efficiently carried out and participated in this process, particularly the Secretary-General, Mr. Boutros-Ghali, his predecessor and their colleagues.

Cape Verde, which added its own modest contribution to the multilateral search for viable solutions, considers that an honourable result has been achieved: that which is offered to us today in the form of a draft Agreement - a product that is certainly not ideal nor finalized, but which my Government endorses and which my delegation is ready to adopt.

I hope to have the opportunity to sign this Agreement at the end of these meetings, subject to ratification in conformity with Cape Verde law and the text of the Agreement itself.

Mr. Larrain (Chile) *(interpretation from Spanish):* The adoption of the United Nations Convention on the Law of the Sea represents one of the most important milestones in the history of the United Nations and is a concrete reflection of what this Organization can do to find consensus solutions that are acceptable to the entire international community with respect to problems of great scope and complexity.

The Third United Nations Conference on the Law of the Sea and the Convention itself constitute an unparalleled contribution to international law for the United Nations and all international organizations as a whole.

The legal order for the seas and in particular the interests of the developing countries require priority attention from all States. The Convention on the Law of the Sea establishes a 200-mile exclusive economic zone, initiated by Chile in 1947; a regime for the administration of fisheries; a mechanism for the prevention of pollution; the promotion of scientific research; a registry of basic geographic coordinates; and regimes governing islands, international straits, and deep-seabed mining.

For Chile, a maritime and fishing country that has nearly 7,000-mile coastline on its continental, insular and Antarctic territory, the Convention is of great importance. My country signed the Convention with great satisfaction, based fundamentally on the fact that it encourages the primacy of law, cooperation among States and international order and justice. Furthermore, the Convention establishes, for the first time, comprehensive regulation of the seas.

This session marks a new milestone with respect to the Convention on the Law of the Sea. It is a formal reflection of agreement on Part XI of the Convention on deep-seabed mining and the international zone, which the international community had not been able to reach.

I must express the satisfaction of the Government of Chile with the Secretary-General's report in document A/48/950, which is the result of consultations on the pending questions with regard to the provisions of Part XI of the Convention; this constitutes an important step towards the universal acceptance of the Convention on the Law of the Sea. This report is the consolidation, a few months before the entry into force of the Convention on the Law of the Sea, of the objectives we had in mind when we started the process 20 years ago.

The negotiation process had various aspects and stages. In that respect, the delegation of Chile in 1986, during the fortieth session of the General Assembly, made an appeal for changes to be made to Part XI of the Convention with a view to obtaining its universal acceptance. Furthermore, the Group of 77 in 1987 expressed its willingness to begin a dialogue with any interested country, whether it be a signatory of the Convention on the Law of the Sea or not, with a view to resolving the problems standing in the way of ratification of or accession to the Convention.

All of this allowed the then Secretary-General of the United Nations, Mr. Javier Pérez de Cuéllar, to initiate under his aegis the process of consultations, which was continued by the current Secretary-General and his Legal Counsels, Mr. Fleischhauer and Mr. Corell, all of whom deserve our sincere gratitude.

The Agreement we are hailing today, which reflects to a great extent the political and economic changes of the last decade, is the result of an arduous and complex process of negotiations in which we all had to make concessions in the general interest of the international community. From that viewpoint, the contribution made by the developing countries deserves special recognition.

The President returned to the Chair.

Chile believes that with regard to the seabed, it is of great importance that the International Seabed Authority - in the period between the entry into force and the approval of the first plan of work for the exploitation of the mineral resources - establish clear norms for the protection and preservation of the marine environment; similarly, the principles agreed upon in the consultations relating to not granting subsidies with regard to the international zone must be upheld.

The historic agreement reached today is the culmination of a very important stage in the history of the United Nations, in the progressive development of international law, and in initiating a new process of implementation of the provisions of the Convention on the Law of the Sea as a main instrument governing the use of the seas. We hope that this new stage will be entered into with the same spirit that led to the adoption of the Convention on the Law of the Sea.

Mrs. Kaukdranta (Finland): It is a great pleasure for Finland to be participating in this discussion at this historic moment. At Montego Bay 12 years ago, the signing of the Final Act of the Third United Nations Conference on the Law of the Sea and the opening for signature of the law of the sea Convention were described as the culmination of a major process of codification and development of international law. I quote the statement of the then Secretary-General, Mr. Javier Pérez de Cuéllar:

> "In order to affirm that international law is now irrevocably transformed so far as the seas are concerned, we need not wait for the process of ratification of the Convention to begin."

Indeed, the Convention has already had an important impact on the development of the law of the sea. A considerable part of its provisions have been consecrated as customary international law. However, as we all know, this has not been the case with the provisions related to the Area. The relation of Part XI to the rest of the Convention has been often, and rightly so, referred to in terms of "two conventions in one". There is no need at this juncture to go into the problems the international community would have faced had this situation prevailed after the entry into force of the Convention. With the draft implementation Agreement now before us, the integrity of the law of the sea Convention can be ensured. This is a major achievement. Acceptance and ratification of the Convention by the largest possible number of States constitutes by far the best framework for the transformation of the law of the sea that is already under way.

The informal consultations initiated and organized by the Secretary-General have constituted a major cooperative effort. Our thanks for this go to the Secretary-General, Mr. Boutros Boutros-Ghali, and his predecessor; to the Legal Counsel, Mr. Hans Corell, and his predecessor, Mr. Carl-August Fleischhauer; as well as to the Division for Ocean Affairs and the Law of the Sea. We wish also to thank all the delegations that, with their pragmatic and constructive attitude, with innovative ideas and with their patience, contributed to the conclusion of the draft Agreement.

As regards the institutional arrangements and costs to States Parties, the thrust on cost-effectiveness and the evolutionary approach adopted in the draft Agreement are highly relevant in view of the distant prospects for the beginning of commercial activities in the deep seabed. The provisions on the Enterprise, decision-making, the Review Conference, transfer of technology, production policy, economic assistance, financial terms of contracts and the Finance Committee as they now stand constitute a feasible framework for the work of the future International Seabed Authority. Let us hope that the cooperative spirit that has allowed for the conclusion of the draft agreement will continue in the future, thus facilitating the creation, in accordance with the Convention and the draft Agreement, of a pattern of cooperation in the interests of all mankind.

Like previous speakers, we are also pleased with the reference in the preamble of the draft Agreement to the importance of the Convention for the protection and preservation of the marine environment and its living resources.

Let me conclude by announcing that Finland has joined in sponsoring the draft resolution and will sign the draft Agreement tomorrow, with the customary reservation regarding ratification.

The President: We have heard the last speaker in the debate on this item. I call on the representative of Indonesia on a point of order.

Mr. Djalal (Indonesia): I am grateful to you, Mr. President, for this opportunity to convey one or two points.

The Group of 77, with which I have consulted, feels that the President should announce the time of the vote on the draft resolution so that there can be as many members in the Hall as possible for its adoption.

Secondly, we have been told that quite a few new States are being added to the list of sponsors of the draft resolution since the representative of Fiji introduced it yesterday. We hope that, before the vote, the President will read out the updated list of sponsors of the draft resolution.

Thirdly, a number of members of the Group of 77 have asked me to state our exception to the interpretation offered this morning by the delegation of the Russian Federation of the meaning of the concept of the common heritage of mankind. It continues to be the view of the Group of 77 that the exploration and exploitation of seabed resources within the context of the common heritage of mankind can take place only within the framework of the Convention and the draft Agreement upon which the Assembly will take a decision today - and not outside that framework.

The President: It had been my intention to proceed to the vote on the draft resolution now; in the absence of any proposal to the contrary, I shall do so.

Further, I shall of course read out the full list of sponsors of the draft resolution.

We shall now proceed to consider draft resolution A/48/L.60.

Before calling on the first speaker in explanation of vote before the voting, may I remind delegations that explanations of vote are limited to 10 minutes and should be made by delegates from their seats.

Mr. Valencia (Ecuador) (*interpretation from Spanish*): Although Ecuador participated actively in the process of drawing up the United Nations Convention on the Law of the Sea, we did not adhere or subscribe to the Convention or any other instrument deriving from the Third United Nations Conference on the Law of the Sea for the reasons we put forward in our statements made on 30 April 1982, at the time of the adoption of the Final Act of the Conference, and on 10 December 1982, when the Convention was adopted.

Under these circumstances, and in conformity with the aforementioned reasons, Ecuador can neither participate in the adoption of the Agreement relating to the Implementation of Part XI of the Convention nor go along with the consensus to approve the draft resolution and Agreement.

We declare, therefore, that we are not bound by this Agreement and will not apply it provisionally. We will be bound by it only should we feel it necessary at some point, and we will make notification of this in writing when the internal and comprehensive process of analysis now taking place is concluded.

However, the delegation of Ecuador appreciates the efforts carried out in particular by numerous developing countries which have accepted, with this Agreement, the requirements imposed by the evolution of the international situation, in the aim of achieving the broadest possible adherence to the Convention thus partially revised, and consequently of obtaining its general and effective implementation.

Finally, the delegation of Ecuador wishes to note its satisfaction at the very useful initiative of the Secretary-General to convene the series of informal consultations on Part XI of the Convention, with, of course, the important participation of all delegations, which has made it possible to reach a balanced formula that will ensure the further development of the law of the sea. The developing countries and the members of the Permanent Commission of the South Pacific who signed the historic Agreement of Santiago of 18 August 1952 have made a special contribution to that progress.

The President: We have heard the only speaker in explanation of vote before the vote. The Assembly will now take a decision on draft resolution A/48/L.60.

I should like to announce that the following countries have now become sponsors of draft resolution A/48/L.60, in addition to the sponsors read out by the representative of Fiji in his introduction of the draft resolution yesterday: Belgium, Benin, Brazil, Cameroon, China, Denmark, Finland, France, Guinea-Bissau, Guyana, Ireland, Italy, Luxembourg, Norway, Papua New Guinea, Portugal, Samoa, Senegal, Seychelles, the Solomon Islands, Spain, Sweden, Trinidad and Tobago, the United Republic of Tanzania, Uruguay and Vanuatu.

The report of the Fifth Committee on the programme budget implications of the draft resolution is contained in document A/48/964.

In addition, I would like to take this opportunity to read out the text of the informal understanding reached in the course of the negotiations, which is contained in annex II of document A/48/950:

> "Once there is a widespread participation in the International Seabed Authority and the number of members of each regional group participating in the Authority is substantially similar to its membership in the United Nations, it is understood that each regional group would be represented in the Council of the Authority as a whole by at least three members."

I shall now put to the vote draft resolution A/48/L.60. A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Cape

Verde, Chile, China, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Grenada, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Madagascar, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Samoa, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Viet Nam, Zimbabwe

Against: None

Abstaining: Colombia, Nicaragua, Panama, Peru, Russian Federation, Thailand, Venezuela

The draft resolution was adopted by 121 votes to none, with 7 abstentions (resolution 48/263).*

The President: Before calling on the first speaker in explanation of vote after the voting, may I remind delegations that explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

Mr. Béliz (Panama) *(interpretation from Spanish)*: The Republic of Panama has decided on this occasion once again to abstain, given that we have to overcome certain obstacles on the domestic front. This matter is still before the National Assembly.

Mr. Rivero Rosario (Cuba) *(interpretation from Spanish)*: The draft resolution and the draft Agreement which have been put to the vote are the result of great efforts to achieve universality of the United Nations Convention on the Law of the Sea, which was signed in Jamaica on 10 December 1982.

Cuba had the honour of being one of its 119 signatories and has the distinction of being one of the 60 ratifying States which, over the last 12 years, we have gradually seen rise to the minimum required. Cuba signed and ratified the Convention and, of course, any changes in it would require a constitutional process and decision at the same level of ratification.

Our country is also aware that a Convention such as that on the law of the sea, adopted by the Third United Nations Conference on the subject, is considered as an irrevocable change in international law, as was announced by the then Secretary-General, Mr. Pérez de Cuéllar, on the day the Convention was signed. The United Nations has worked for almost 20 years to achieve this end, and this historic text deserves universal approval because of its contribution to the maintenance of peace, justice and progress for all peoples.

The first summit of the Latin American countries made it clear that the principles declared by the General Assembly are not negotiable, and that the deep seabed and its subsoil beyond the limits of national jurisdiction as well as its resources are the common heritage of mankind. On the other hand, we must seek means to achieve the universal participation of States. Cuba believes that the wording of some articles of the amended Part XI is unsatisfactory, especially since Cuba extracts minerals from its soil and will be affected by the exploitation of the same minerals in the seabed. It is precisely those passages of the text of the 1982 Convention in Part XI that granted certain protection, which among other amendments have been altered in the new version just adopted.

Nevertheless, we understand that this is not the time to weigh the advantages and disadvantages to everyone but to take a constructive and realistic position in order for the Authority to begin the exploration, exploitation and conservation of the seabed, in keeping with the aforementioned principles.

For all these reasons, Cuba voted in favour of the resolution.

Statement by the President

The President: I shall now make a statement in my capacity as President.

Today the General Assembly has adopted the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The primary objective of the

Agreement is to facilitate universal participation in the 1982 Convention on the Law of the Sea and to promote appropriate representation in the institutions which it established.

As history's first comprehensive treaty on the law of the sea, the Convention established a legal order for practically every aspect of the uses and resources of the seas and oceans, providing thereby more stability and predictability in the conduct of States with regard to maritime activities. The Convention on the Law of the Sea is therefore without any doubt an important contribution to the maintenance of peace, justice and progress for all peoples of the world.

The Convention includes a comprehensive system for the peaceful settlement of disputes. This is the pivot upon which the delicate equilibrium of the compromises to be found in the Convention must be balanced.

One feature of this Convention which is sometimes overlooked and which in fact makes it so different from previous instruments on maritime matters is its emphasis on technical assistance.

The Convention expressly exhorts States to develop the technical capacity of developing countries with regard to the conservation and management of marine resources, marine scientific research and the protection of the marine environment with a view to accelerating their social and economic development. It is to be hoped that this provision will be fully satisfied to ensure equity in the exploitation of the resources of the seas and oceans.

Even before its adoption in 1982, the Convention on the Law of the Sea was already exerting a significant influence on the maritime practice of States, especially with respect to maritime areas falling within their national jurisdiction. International organizations, both global and regional, have also based their actions on the norms contained in the Convention.

It is well known, however, that because of their dissatisfaction with certain aspects of the deep-seabed mining regime, none of the major industrialized States has ratified or acceded to the 1982 Convention on the Law of the Sea.

To remedy this situation, the former Secretary-General, Mr. Javier Pérez de Cuéllar, took the initiative in 1990 to convene informal consultations with the declared object of achieving universal participation in the Convention. Thus began a series of informal meetings focusing on the deep seabed mining issues which had prevented the industrialized States from participating in the Convention.

In 1992 the consultations were continued under the aegis of Secretary-General Boutros Boutros-Ghali. It may be recalled that on 16 November 1993 my own country, Guyana, ratified the Convention, becoming the sixtieth State to have deposited its instrument of ratification or accession, thus enabling the Convention on the Law of the Sea to enter into force on 16 November 1994. The impending entry into force of the Convention gave a sense of urgency to these consultations. Three rounds of consultations were held in 1994. At the final round, there appeared the final outcome of these consultations, the Agreement, which the General Assembly has adopted today. I wish to pay sincere tribute to all those who worked so long and so hard to achieve this splendid result.

This Agreement must be viewed as an instrument whose main intent is to pave the way for wider participation in the United Nations Convention on the Law of the Sea. Wider participation not only will result not only in preserving the integrity of the Convention but will also serve to consolidate and strengthen its provisions.

Let us therefore hope that the spirit of international cooperation which helped to construct this unique Convention will inspire its implementation after its entry into force.

I am now pleased to call on the representative of the Secretary-General to make a statement.

Mr. Corell: The Secretary-General, Mr. Boutros Boutros-Ghali, regrets that he is unable to attend this historic resumed forty-eighth session of the General Assembly. I have been asked, in my capacity as Legal Counsel, to make this statement on his behalf.

As the international community strives for a new, more peaceful order in the relations among States, the United Nations Convention on the Law of the Sea stands as a monument to international cooperation, mutual understanding, shared responsibility and an undertaking to resolve differences by resorting to the rule of law rather than to the use of force. Today, we celebrate the achievement of another milestone in our quest for a stable legal order for the oceans.

The adoption today by the General Assembly of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea is the culmination of four years of informal consultations begun by Secretary-General Javier Perez de Cuellar and continued by Secretary-General Boutros Boutros-Ghali with the aim of achieving universal participation in the Convention. This Agreement seeks to achieve a number of important goals, chief among them being the safeguarding of the unified nature of the Convention by securing for it the universal support of the community of nations.

The United Nations Convention on the Law of the Sea is widely recognized as a significant component of the global system of peace and security of which the Charter of the United Nations is the foundation. Through its codification and progressive development of the law of the sea, the framers of the Convention hoped that it would contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of the Charter.

The Convention on the Law of the Sea has invariably stood out as an ambitious undertaking in the scope of the concerns it seeks to address and the issues it seeks to anticipate and settle. It has often been said that the genius of the Convention lies in the delicate balance it strikes between the benefits it bestows on States and the obligations it demands of those same States. Indeed, it may be said that its lasting mark may well be its anticipation of problems and the guidelines it lays down for their resolution. We need look no further than the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which will convene its fourth session shortly, as an example of an attempt to resolve a major challenge facing the international community on the basis of the regime for high-seas fisheries found in the Convention.

From the date of its adoption, the Convention has exerted a dominant influence on the development of the international law of the sea and on the maritime practice of States. Over the years, its provisions on the territorial sea, the exclusive economic zone, the continental shelf, navigation and strategic uses of the ocean, marine scientific research, and the protection and preservation of the marine environment have become the standard against which State practice is measured.

Today, these provisions underpin the laws of many countries, and serve as a framework for a number of cooperative measures. For example, the 12-mile limit for the breadth of the territorial sea is almost universally accepted; most coastal States have taken steps to exercise their rights over the resources of their exclusive economic zone; and a number of treaties and agreements have been concluded with a view to protecting the marine environment on the basis of the framework contained in the Convention.

In the area of dispute settlement, the Convention is the accepted reference point for the peaceful resolution of maritime disputes, its provisions being consistently applied by the International Court of Justice and other arbitral bodies.

And yet, despite these major achievements, the stability of the legal order embodied in the Convention has invariably been threatened by the failure of a number of countries, most notably the industrialized States, to give it their wholehearted support due to the difficulties they had with its deep seabed mining provisions.

The Secretary-General has often stated the view that the only way to avoid a weakening of the Convention, and the dangerous implications that were sure to follow, was to resolve the difficulties with the deep-seabed mining provisions that had stood in the way of universal acceptance. As Secretary-General of the United Nations, and depositary of the Convention, his primary concern has been to avert the obvious dangers of a weakened international law of the sea regime in which few of the industrialized countries participate as parties. That is why the Secretary-General has wholeheartedly supported and continued the informal consultations begun by his predecessor with the aim of resolving the remaining difficulties over the deep-seabed mining provisions with the aim of securing universal participation in the Convention.

In all, 15 rounds of informal consultations have been held over the past four years. It is a tribute to the sense of purpose, seriousness and practicality with which these consultations have been held that we have been able to achieve agreement on the means of implementing the deep seabed mining provisions in a way that will encourage all States to participate fully in the Convention.

The Agreement, which has just been adopted, achieves this goal by removing the obstacles that have so far prevented many States, particularly the industrialized States, from participating in the Convention. Inasmuch as the Agreement further strengthens the Convention and

the principles it embodies by its reaffirmation of the unified character of the Convention, it must be recognized as a significant contribution to the development of international law in general and to the law of the sea in particular.

The Agreement, which will be applied provisionally upon the entry into force of the Convention, may not live up to our highest expectations from a purely legal standpoint. However, its importance and significance lies in its ability to address a political need in such a way as to pave the way for universality. Thus, it stands as a major achievement of the international community and a success for the United Nations at a time when we are all faced with difficulties and challenges that may at times seem daunting.

It has been the Secretary-General's privilege to preside over the informal consultations the result of which you have in your hand in the form of this Agreement. On his behalf, I take this opportunity to pay tribute to each and every delegation for its dedication and sense of purpose and the spirit of compromise that have made this historic session possible. The Secretary-General extends his appreciation and gratitude to each and every one of you.

The President: We have thus concluded this stage of our consideration of agenda item 36.

I should like to inform delegations that the Agreement will be open for signature at a ceremony to take place tomorrow, Friday, 29 July 1994, at 3 p.m. in the General Assembly Hall.

The meeting rose at 12.50 p.m.

Annex

Changes in recorded and/or roll-call votes

Resolution 48/263

Subsequent to the voting, the delegations of Barbados, Gambia, Haiti and the Solomon Islands advised the Secretariat that they had intended to vote in favour.